
**SENATE COMMITTEE ON TRANSPORTATION AND
HOUSING**
Senator Jim Beall, Chair
2015 - 2016 Regular

Bill No: SB 608 **Hearing Date:** 4/7/2015
Author: Liu
Version: 2/27/2015
Urgency: No **Fiscal:** Yes
Consultant: Alison Dinmore

SUBJECT: Right to Rest Act

DIGEST: This bill enacts the Right to Rest Act, which would afford persons experiencing homelessness the right to use public space without discrimination based on their housing status and a civil remedy if their rights pursuant to the Act are violated.

ANALYSIS:

Existing law:

Under the Unruh Civil Rights Act, provides that all persons are free and equal no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation, and are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments.

Under the California Penal Code, provides that any person who lodges in any building, structure, vehicle, or place without the permission of the owner or person entitled to the possession or control in it shall be guilty of disorderly conduct, a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding \$1,000, or both.

This bill enacts the Right to Rest Act, which provides that persons experiencing homelessness shall be permitted to use public space without discrimination based on their housing status. Additionally, civil and human rights afforded in the home

and other private places shall be extended to public areas where homeless persons live.

More specifically, this bill provides that every person in the state shall have the following basic human and civil rights that may be exercised without being subject to criminal or civil sanctions or harassment by law enforcement, public or private security, or agents of a business improvement district (BID):

1. The right to use and move freely in public spaces without discrimination and without time limitations that discriminate based upon housing status.
2. The right to rest in public spaces and to protect oneself from the elements in a non-obstructive manner.
3. The right to eat, share, accept, or give food in any public space in which having food is not otherwise generally prohibited.
4. The right to pray, meditate, worship, or practice religion in public spaces without discrimination based upon housing status.
5. The right to occupy a motor vehicle or a recreational vehicle provided the vehicle is legally parked on public property or parked on private property with the permission of the property owner.

This bill provides that a person whose rights are violated pursuant to this Act may enforce those rights in a civil action and may be entitled to: injunctive and declaratory relief; restitution for loss of property or personal effects and belongings; actual damages; compensatory damages; exemplary damages; statutory damage of \$1,000 per violation; and reasonable attorney's fees and costs to a prevailing party.

Additionally, this bill exempts a person who lodges in any building, structure, vehicle, or place without the permission of the owner or person entitled to possession or control of it, from committing a misdemeanor if that conduct is protected under this Act.

COMMENTS:

- 1. Purpose of the bill.** The author states that this bill seeks to end the criminalization of the non-criminal activities of life

exercised by homeless people by protecting the freedom of movement, sitting, standing, lying, and sleeping, and clarifying that people shall have the right to share food and practice religion in public in California. With poverty and homelessness reaching record numbers in California, there has been a documented increase in laws that target people without homes and impact the poor. These anti-homeless laws — commonly referred to as “vagrancy,” “quality of life,” or “anti-nuisance” laws — deny people the right to exist in public. A survey of homeless people conducted by the Western Region Advocacy Project revealed that the majority of people without homes do not know of a safe place to sleep at night where they would not be arrested.

A report, published by the independent federal agency United States Interagency Council on Homelessness, called “Searching out Solutions: Constructive Alternatives to Criminalization” demonstrates that enforcement of laws against resting is ineffective; it does not increase business revenue or improve public perception of the problem of homelessness. These laws effectively make it harder for people to escape homelessness because the resulting warrants, fines, and criminal records make people ineligible for jobs and housing. This report was commended in a resolution by the U.S. Conference of Mayors. The U.S. Conference of Mayors also urged its members to review and adopt the recommendations in the report to meet the needs of the larger community as a whole while also enhancing progress on efforts to end homelessness.

2. Factors contributing to homelessness. Homelessness is the most severe face of poverty. According to the U.S. Department of Housing and Urban Development, California had 113,952 homeless people, or 20% of the nation’s overall homeless population, in January 2014. Of California’s total homeless population, 27% were chronically homeless, 20% were in households with at least one parent and one child, 10% were veterans, and 10% were victims of domestic violence. California also had the largest number of homeless families, unaccompanied homeless youth, and homeless veterans.

Contemporary homelessness began in the early 1980s due to shifts in economic and social policy at the federal level, such as dramatic cuts in affordable housing and other programs designed to serve low-income people. These economic and social policies continue to contribute to homelessness today. In addition, California's homelessness rates are exacerbated by the state's lack of affordable housing and decreased funding from the loss of redevelopment. Rents have risen to levels that make it difficult for low-wage workers to find affordable rental units. California has one of the nation's highest rates of "poor renters," or people that spend more than 50% of their income on rent. While most homeless people in the U.S. lived in emergency shelters or transitional housing in 2013, most homeless people in California were unsheltered. California's high housing costs and shortage of shelters leave many homeless people with no choice but to rest and sleep in public.

3. Data indicates vagrancy laws punish status, not behavior.

Researchers from the Policy Advocacy Clinic at the University of California at Berkeley Law School identified and analyzed more than 500 municipal laws that criminalize standing, sitting, resting, sleeping, and sharing of food in public places in its report "California's New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State." The report found that the number of ordinances targeting those behaviors rose with the increase in homelessness following the sharp decline of federal funding for affordable housing in the 1980s and again with the Great Recession in 2008. Researchers noticed a similar correlation between arrests and the economy; arrests rose during times of economic recessions and fell during rises in the economy. The report noted that these trends indicate that enforcement of vagrancy ordinances increases in response to deteriorating economic conditions and rising levels of homelessness.

Since 2011, despite decreases in unemployment and reduced impacts of the Great Recession, vagrancy arrests have continued to trend upwards. Additionally, researchers found that statewide arrests for these types of offenses rose by 77%, while arrests for drunkenness and disorderly conduct have decreased by 16% and 48% respectively. The report suggests

that homeless people are being punished for their status, rather than their behavior.

4. Creating barriers to housing and other services. The Western Regional Advocacy Project led a survey effort documenting homeless people's experiences with the criminal justice system for survival-related crimes. More than three quarters of survey respondents (78%) reported being harassed, cited, or arrested by police officers for sleeping outside. Seventy-five percent reported the same for sitting or lying down, and 76% for loitering or "hanging out." Most of the relevant laws are infractions, which generally do not result in jail or prison time but do carry significant fines. Due to an inability to pay fines or make a court appearance, 57% reported bench warrants for their arrest.

Arrests and criminal records create a significant barrier to employment. For those who are working, an arrest or associated court appearances can cost them their jobs. Involvement with the criminal justice system often limits a person's eligibility for public programs, cutting them off from the social safety net. The Western Regional Policy Project suggests that enforcement of these laws ultimately does not address the root causes of homelessness and could bar the homeless from accessing public assistance, qualifying for public housing, and finding and maintaining employment.

5. Local costs? Opponents argue that the enactment of this bill will lead to increased local costs and loss of revenues associated with maintenance and repair to public parks, public facilities, and open spaces, and would impact businesses. The researchers at Policy Advocacy Clinic at the UC Berkeley Law School argue, however, that it might be more costly to enforce these vagrancy laws. In addition to time police officers spend issuing citations, the justice system spends time and money processing them. In San Francisco alone, the Superior Court processing costs for anti-homeless citations was estimated at \$4.10 per case in 2000, resulting in \$77,900 in costs that year. The San Francisco District Attorney's office then spent \$317,086 processing infractions and misdemeanors that same year.

An analysis published by the United States Interagency Council on Homelessness analyzed cost studies of homeless interventions conducted between 2004 and 2009 in major U.S. cities, including Los Angeles and San Francisco, and found that U.S. jurisdictions spend an average of \$87 per day to incarcerate an individual in a county jail, but only \$28 per day to offer shelter. Further, programs that offer housing and supportive services, such as Project 50 in Los Angeles, realized a surplus after two years due to savings on incarceration and medical services. The researchers at the Policy Advocacy Clinic at the UC Berkeley Law School concludes that enforcement efforts may burden cities with significant financial costs.

6. Right for homeless people to use public space. In addition to protection from discrimination based on housing status, this bill would establish a right for the homeless to use public spaces in the same manner as any other person. This bill does not preclude a local jurisdiction from imposing time, place, or manner restrictions on use of public space, so long as those restrictions do not treat homeless and non-homeless persons differently. For example, a city may impose time restrictions on the use of a park, so long as the restriction is not intended to target the homeless or being enforced only against them. This bill also allows a person to sleep in their car on public property and on private property with the permission of the property owner, provided no other laws are being broken. For example, if a city limits parking to less than two hours or prohibits parking a recreational vehicle, these laws would still apply.

Further, this bill would extend civil and human rights to public places where homeless people live. A person whose rights have been violated may enforce those rights in a civil action and be entitled to appropriate relief and damages, including restitution and reasonable attorney's fees.

7. Clarification of “public space.” The bill defines public space as property owned, in whole or in part, by a state or local government entity or any property upon which there is an easement for public use and that is held open to the public. Campgrounds owned by public entities and open for public use

often require payment for use of camp sites and may fall under this definition of public space. Additionally, some state or local entities hold property open for public use at certain times but are closed at other times. The author does not intend for this bill to apply to public space that requires a fee or is closed to all persons. **The author has agreed to accept amendments that would clarify that the Act shall not apply to a public space during a time when it is closed to all persons or when a fee is required for entry or use.**

8. Opposition. Opponents argue that this bill is misguided and may incentivize homeless activity in cities, particularly among a subgroup of individuals who refuse assistance, rather than addressing the root causes of homelessness. This bill will establish a right to live on the streets, thus creating unsanitary conditions, impeding business, and creating intimidating and uncomfortable environments that will be undesirable for others to visit. Opponents state that this bill would usurp voter-approved ordinances that seek to balance the rights, health, and safety of all their residents by preventing camping, sleeping, and lying on the streets.

Opponents further argue that the bill creates confusion as to what activities are permitted, making enforcement of its provisions challenging to law enforcement, BID agents, and public and private security personnel. For example, the actions of those who seek to assist the homeless, under this bill, could be considered “harassment.” As indicated above, the bill may also result in additional costs and loss of revenues to local jurisdictions associated with maintenance and repair to public parks, public facilities, and open spaces.

9. Double-referral. The Senate Rules Committee has referred this bill to both this committee and the Judiciary Committee.

RELATED LEGISLATION:

AB 5 (Ammiano, 2014) — Would have created the Homeless Person’s Bill of Rights and Fairness Act, which: 1) prohibited the discrimination against the homeless by public entities; 2) provided that every person had the right to move freely, rest, eat, accept, or give food or water, and solicit donations in public

spaces; and 3) established the right to lawful self-employment, confidentiality of specified records, and assistance of legal counsel. The bill also required the Department of Public Health to fund the provision of health and hygiene centers for use by homeless persons in designated areas. *This bill was held on suspense in the Assembly Appropriations Committee.*

FISCAL EFFECT: Yes Appropriation: No Fiscal Com.: Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, April 1, 2015.)

SUPPORT:

East Bay Community Law Center (Co-sponsor)
JERICHO: A Voice for Justice (Co-sponsor)
Western Center on Law and Poverty (Co-sponsor)
Western Regional Advocacy Project (Co-sponsor)
American Civil Liberties Union of California (ACLU-CA)
Affordable Homeless Housing Alternatives (AHHA)
AWARE-LA
Berkeley Needle Exchange Emergency Distribution (Berkeley NEED)
Caduceus Justice
California Catholic Conference, Inc.
California Council of Churches IMPACT
California Partnership
Californians United for a Responsible Budget (CURB)
City Paws L.A.
Clarion Alley Mural Project (CAMP)
Coalition of California Welfare Rights Organizations, Inc.
Cooperation for Supportive Housing (CSH)
Drug Policy Alliance
Elica Health Centers
Esperanza Community Housing Corporation
Fair Chance Project
Food Not Bombs
Foothill House of Hospitality
General Assistance Advocacy Project (GAAP)

Girls Think Tank
Grey Panthers of San Francisco
Gubbio Project
Homeless Health Care Los Angeles
Homeless Lives Matter — Berkeley
Homeless Action Center
Housing California
HOUSING WORKS
Hunger Action Los Angeles (HALA)
Instituto de Educacion Popular del Sur de California (IDEPSCA)
Issues and Solutions
JWCH Institute, Inc.
L.A. for Choice
L.A. Human Right to Housing Collective
Labor Community Strategy Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Larkin Street Youth Services
Lavender Youth Recreation and Information Center (LYRIC)
Legal Services for Prisoners with Children (LSPC)
Los Angeles Poverty Department (LAPD)
Los Angeles Catholic Worker
Los Angeles Community Action Network (LACAN)
Mutual Housing California
National Association for the Education of Homeless Children and Youth
(NAEHCY)
National Association of Social Workers, California (NASW-CA)
National Coalition for the Homeless (NCH)
National Law Center on Homelessness and Poverty
Occupy Orange County
Occupy Venice
Peace and Freedom Party of California
People Organized for Westside Renewal (POWER)
Prison Activist Resource Center (PARC)
Redwood Gospel Mission
Safe Ground Sacramento
Sacramento Food Not Bombs
Sacramento Homeless Organizing Committee (SHOC)
Sacramento Housing Alliance
Sacramento Loaves and Fishes
Sacramento Regional Coalition to End Homelessness (SRCEH)

San Francisco Coalition on Homelessness
San Francisco Living Wage Coalition
Southern California Association of Non-Profit Housing
Spirit of Venice
Strategic Actions for a Just Economy
St. Anthony Foundation
St. James Infirmary — San Francisco
St. Mary's Center — Oakland
Suitcase Clinic
Tenemos que Reclamar y Unidos Salvar La Tierra (TRUST South LA)
United Coalition East Prevention Project (UCEPP)
Venice Community Housing
Venice Justice Committee
Women Organizing Resources, Knowledge, and Services (WORKS)
Wind Youth Services
6 Individuals

OPPOSITION:

California Chamber of Commerce
California Park and Recreation Society
California State Sheriffs' Association
Central City Association of Los Angeles
Central City East Association
Hollywood Property Owners Alliance
Los Angeles Fashion District Business Improvement District
League of California Cities
Sacramento County District Attorney, Anne Marie Schubert
Small Business California
South Park Business Improvement District
Sunset and Vine Business Improvement District
Westchester Town Center
7 Individuals

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